

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **March 26, 2007**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Ed Ulledalen gave the Invocation.

**ROLL CALL** – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones, and Clark.

**MINUTES – March 12, 2007**. Approved as printed.

**COURTESIES – None**

### **PROCLAMATIONS**

- April, 2007: Fair Housing Month

### **ADMINISTRATOR REPORTS – Tina Volek**

- City Administrator Tina Volek said the Council Agenda Review meeting would be held tomorrow evening at 5:30 p.m. in the City Hall Conference Room.
- She requested that ITEM C be separated.
- Ms. Volek informed the Council that ITEMS G and Q were revised. She noted that ITEM O was corrected to reflect a public hearing date of 4/23/07.
- She also noted that the Staff requested withdrawal of ITEM #8.

**PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
**(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)**

The public comment period was opened. There were no speakers. The public comment was closed. The public comment period was reopened.

MICHELLE JOHNSON, 2705 BLUE CREEK ROAD, asked the Council to consider with reference to ITEM Q the following: (1) Proposing a fair contract; (2) Compensation for attorney fees; and (3) The City agreeing not to annex her property without her permission. Councilmember Ronquillo asked if the City had made an offer. Ms. Johnson replied that the City had and the offers had been "going on" for approximately two (2) years. She noted that the parties had not been able to negotiate an agreement however. Councilmember Stevens stated that attorney fees would be reimbursed to her. She explained that the Council

cannot instruct a future Council not to annex property. There were no other speakers. The public comment period was closed.

**CONSENT AGENDA:**

**1. A. Bid Awards:**

**(1) Construction of Fire Station #7.** (Opened March 13, 2007). Recommend General Contractors Construction(GCC), \$1,351,204.00.

**(2) W.O. 07-05, Contract #1, 2007 Accessibility Ramps.** (Opened March 13, 2007). Recommend GCC, \$112,650.00.

**(3) Airport Improvement Program (AIP) #32 Runway 7/25 Rehabilitation.** (Opened March 13, 2007). Recommend Riverside Sand and Gravel, Inc., \$778,900.81.

**(4) Automobile Rental Concession Leases.** (Delayed from 3/12/07). Recommend (1) Overland West, Inc. dba Hertz, \$1,829,324.00; (2) Enterprise Rent A Car, \$1,370,845.00; (3)Corpat Inc. dba Alamo/National, \$1,221,200.00; (4)Lewis Transportation Group dba Thrifty/Dollar Rent A Car, \$920,007.00.

**B. Amendment #1,** Professional Services Contract with CTA Architects Engineers for Architectural Services for Airport Improvement Program (AIP) 32, \$68,819.00.

**C. Contract for Professional Services** with Carl Thuesen ASLA, for design and construction services for Harvest, Olympic and High Sierra Parks Irrigation Renovation, \$41,899.84.

**D. Agreement** with PM&M, LLC, Max E. Thornton, and the Katherine K. Thornton Testamentary Trust for access across their property to the Briarwood Water Reservoir, \$0.00.

**E. W.O. 04-26: Zone 4 - Water Reservoir and Zone 5 Water Reservoir and pump station, Professional Services Contract** with HDR Engineering, Inc., \$497,885.00.

**F. Certified Local Government Program Contract** with the State of Montana Historic Preservation Office, \$4,031.00.

**G. W.O. 04-36: Briarwood Sanitary Sewer Main Extension** Right-of-Way Agreement and Perpetual Right-of-Way Easement with Gary and Norma Buchanan, \$7,450.00.

**H. Development Agreement with Stock Naughton LLP**, owner of Lots 6B, 6C, and 6D, Block 2 of Circle Fifty Sub., \$0.00.

**I. Advertising Agreement** with the Billings Gazette for display, classified, legal, and on-line advertising – two (2) year term, estimated \$43,600/year.

**J. W.O. 04-33: Lake Elmo Drive (Hilltop Rd to Wicks Ln) Right-of-Way Acquisition:**

(1) Parcel 10: Portion of Lot 2, Block 1, Croy Sub., to Andrea D. Baker, Right-of-Way Agreement for temporary construction permit, \$200.00.

(2) Parcel 33: Portion of Tract 1, C/S No. 2920, to Lorri Ann Hurry, \$3,150.00.

(3) Parcel 38: Portion of Lot 7, Block 1, Rice Sub., to Cameron James Stefanic and Tanna Marie Stefanic, \$2,200.00.

(4) Parcel 49: Portion of Lot 21, Block 1, Broadmoor Sub., to Donald L. Nave and Ruth A. Nave, \$6,250.00.

(5) Parcel 55: Portion of Lot 1, Block 2, Uinta Park Sub., to Dena and Uriah Edmunds, \$1,350.00.

(6) Parcel 64: Portion of Lot 15, Block 3, Arrowhead Sub., to David E. Harris, \$3,400.00.

**K. Street Closures:**

(1) *Arthritis Foundation Annual Run & Walk*, April 28<sup>th</sup>, 2007, 2<sup>nd</sup> Avenue North and 3<sup>rd</sup> Avenue North from North 24<sup>th</sup> Street to North 33<sup>rd</sup> Street.

(2) *Montana Pride Network, Gay Pride Parade*, June 16, 2007, 2<sup>nd</sup> and 3<sup>rd</sup> Avenue North, North 27<sup>th</sup> to North 33<sup>rd</sup>.

(3) *Chase Hawks Association Burn the Point Parade and Street Dance*, August 31, 2007 - Parade: Standard parade route; Street Dance: North 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Avenue North and 2<sup>nd</sup> Avenue North from North 27<sup>th</sup> – North 29<sup>th</sup> Streets.

**L. Quarterly Report for Pledged Collateral** US Bank, Sterling Savings Bank and Wells Fargo Bank.

**M. Semi-Annual Investment Report.**

**N. Resolution of Intent #07-18544 for Annex #07-06:** property located at the northwest corner of 54<sup>th</sup> St. West and Colton Blvd., Tracts 1 & 2 of C/S 1323: Tract 1 of C/S 1815; Tract 2D of Corrected Amended Tract 2 of

C/S 1952; Yellowstone Meadows - Phase One Parkland; Yellowstone Meadows -Phase Three Parkland; Lots 33, 34, 63, and 64 of Sunny Cove Fruit Farms, all adjacent right-of-way of 54<sup>th</sup> St. West, 56<sup>th</sup> St. West and Colton Blvd., and the future site of the Cottonwood Park and a proposed School District #2 elementary school, City of Billings, owner, and setting a public hearing for 4/23/07.

**O. Acknowledging receipt of petition for Annex #07-07:** property located SE of King Avenue West and 48<sup>th</sup> Street West and described as Lots 1-5, Block 1, Western Sky Sub., Cal Kunkel and Gareld Krieg owners and petitioners, and setting a public hearing for 4/23/07.

**P. Acceptance of donations:**

(1) Amend Park Development Council donation for seasonal position at Amend Park, \$15,000 per year.

(2) In-Kind Volunteers and Materials Donations from Harvest Church, estimated value is \$60,000.00.

**Q. Resolution #07-18539** authorizing condemnation to acquire utility easements for W.O. 04-36: Briarwood Sanitary Sewer Main Extension.

**R. Resolution of Intent #07-18540** to order improvements under W.O. 06-18: Broadwater Sub., Phase V, curb/gutter and street reconstruction and setting a public hearing for 4/23/07.

**S. Second/final reading ordinance #07-5404** expanding the boundaries of Ward IV to include recently annexed property described as: Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms. Mary Kramer, owner.

**T. Final Plat** of Amended Lot 7, Block 2, Lake Hills Sub., 1<sup>st</sup> Filing.

**U** **Final Plat** of Amended Normal Subdivision, 3<sup>rd</sup> Filing.

**V. Bills and Payroll.**

- (1) February 23, 2007
- (2) March 2, 2007
- (3) February 1 – February 28, 2007 (Court)

**(Action:** approval or disapproval of Consent Agenda.)

Councilmember Boyer moved for approval of the Consent Agenda EXCEPT ITEM 1C, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of ITEM 1C, seconded by Councilmember Ruegamer. City Attorney Brent Brooks reported that when he read through the contract, he found the portion that is labeled *Appendix A Section 3*, needs re-formatting and re-numbering/lettering. Mr. Brooks noted that the editing does not affect the terms of the contract. He asked that Staff be allowed to work with the Parks Department to edit that portion of the contract labeled *Appendix A, Section 3* to change some of the grammar, reformat it to align with the rest of the appendices in that particular contract, but not change the terms in that section. Mr. Brooks stated the Council has two options: (1) Allow the changes to be made for the Mayor's signature or (2) Readdress the issue in two (2) weeks.

Councilmember Jones moved to amend the motion to have Staff work with the Parks Department to edit that portion of the contract labeled *Appendix A, Section 3* to change some of the grammar, reformat it to align with the rest of the appendices in that particular contract, but not change the terms in that section (as explained by Mr. Brooks), seconded by Councilmember Gaghen. On a voice vote, the amendment was unanimously approved. On a voice vote on the original motion as amended, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION #07-18541 for Annexation #07-03 of 3 parcels and adjacent right-of-way totaling 2.927 acres and described as (1) N 1/2 of Lot 3, Lot 4, Sandra Subdivision, City of Billings, petitioner. The first reading and public hearing on the ordinance to add the property to Ward 1 is scheduled for Council action on April 9, 2007. The second and final reading of the ordinance is scheduled for Council action on April 23, 2007. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION #07-18542 for Annexation #07-04 of a 0.243-acre property described as C/S 598 in Lot 30, Clark Subdivision and adjacent right-of-way, and located at 307 Garden Ave., Lana Jean Bittner, petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION #07-18543 creating expanded Park Maintenance District (PMD) #4025: Rehberg Ranch Estates Sub., 1<sup>st</sup> & 2<sup>nd</sup> Filings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION ordering improvements under W.O. 05-02: 2005 - 2006 Miscellaneous/Developer-Related Improvements. Staff Recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director David Mumford said the proposed project represents two categories of properties. The first category was the unfulfilled building permit obligations. He said the City of Billings Site Development and/or Subdivision Ordinances require the installation of public improvements in conjunction with the issuance of building permits. He noted a small number of these properties either had not completed the requirements of the right-of-way permits, or have requested that the improvements be completed under the City's project. Per Council policy, the uncompleted right-of-way permits are included in the next annual Developer-Related Program. The costs of completing these improvements are assessed to the property owner.

Mr. Mumford explained that the second category represents continuation of the annual improvements project for dealing with tripping hazards, drainage problems, property owner requests, citizen complaints, and other miscellaneous concrete work brought to the attention of the City Engineer's Office. This program proposes a continuation of the Council policy of allocating Gas Tax Funds for reconstruction of side street frontages on corner lots and the use of Curb and Gutter Funds to cover the cost of curb and gutter repair.

He noted the proposed project also uses additional funding allocations to cover costs not normally assessed to property owners. A Storm Drain Fund allocation is used for repairing defective valley gutters, improperly graded curb and gutter, and substandard storm drain inlets; and a Public Works/Belknap Repair Fund allocation allows for minor adjustments of water lines.

The public hearing was opened. JUNE BLAKESLY, 530 AVENUE D, said she received the letter from the City Public Works Department advising of

additional funds owed for improvements that totaled approximately \$7,500.00. Ms. Blakesly explained to the Council that she was on a "fixed" income and could not afford the added expense. She further explained that this would definitely be a "hardship". Ms. Blakesly asked the Council for assistance.

DAVID ALDROW, KEYSTONE CONSTRUCTION COMPANY, 2033 MAIN STREET, said he objects to the assessment the company received because it was "piggybacking" additional expense on a relatively small project. Mr. Aldrow said that the company has complied with all items requested to date. However, this additional \$24,000 request would make the total paid -- \$80,000 for a \$24,000 project.

CATHIE PAINTER, 2029 19<sup>TH</sup> STREET WEST, stated her property has a tree with roots that are causing problems for the sidewalk. She asked for information as to what would happen to the tree when the sidewalk was repaired. Mr. Mumford explained that should the tree not be able to survive the repairs of the sidewalk, the tree would be cut down and hauled to the landfill. Otherwise, the tree would be left standing.

JOHN HAMMOND, 35 S. CRESTWOOD, stated he received a letter from the City stating he laid asphalt in error and owed \$4,000 to the City. Mr. Hammond explained that he had a verbal agreement with the former City Engineer, Kurt Corey, that he would be exempt from doing any future asphalt work over to the curb until the City did the street. Mayor Tussing asked Mr. Hammond if he had that agreement in writing. Mr. Hammond stated he did not. Mr. Mumford explained that the property Mr. Hammond owns had a permit from 1999 that required the contractor to install the curb/gutter/sidewalk and the asphalt between the existing asphalt and the new curb/gutter/sidewalk. The permit clearly states the procedures that have to be followed. Mr. Mumford noted that the department has been working with Mr. Hammond since 1999 to complete this project. He also explained that Kurt Corey was contacted and an email sent to Mr. Mumford explaining Mr. Hammond was convinced that Mr. Corey promised him something different than what was being proposed for his property on Lake Elmo Drive under the terms of the upcoming assessment project. Mr. Mumford spoke to Mr. Corey and Mr. Corey did not remember having any conversation with Mr. Hammond about the subject matter. Mr. Mumford stated the only documentation available was the original permit from 1999. He said they would continue to work with Mr. Hammond to come to an agreeable solution.

SIMON LOUMER, NO ADDRESS PROVIDED, stated he lives by Skyview High School and the drainage was not adequate. Mr. Loumer explained that he received a letter from the City stating an "apron" was to be installed and Mr. Loumer stated he does not want an "apron" installed by his driveway. Mr. Loumer further explained that the road base for the sidewalk was laid out and the project would be completed by the middle of the summer. He asked the Council for leniency with reference to the sidewalk.

BECKY BIRD, 117 ARDMORE, said she is the daughter of Judy Blakesly, 530 Avenue D. Ms. Bird said these projects were unfair to new property owners. She explained that she called the Public Works Department and spoke to Mark Mace, noting that Mr. Mace stated that there was an error in the estimate and he would inform her of the revisions in writing. She said she had not received this information.

There were no other speakers. The public hearing was closed.

Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Ulledalen. Councilmember Brewster amended the motion to "strike 2033 Main Street", seconded by Councilmember Stevens. On a roll call vote, the amendment was approved 7-4. Councilmembers Gaghen, Stevens, Brewster, Veis, Ruegamer, Jones, and Clark voted "yes". Mayor Tussing and Councilmembers Ronquillo, Ulledalen and Boyer voted "no".

Councilmember Veis made a substitute motion to delay W.O. 05-02 to the April 9, 2007 meeting, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Mayor Tussing called a brief recess at 7:45 p.m.

The meeting was called back to order at 8:00 p.m.

**6. PUBLIC HEARING AND 1<sup>ST</sup> READING ORDINANCE ZONE CHANGE**  
**#799: A zone change from Residential-15,000 (R-150) to Public on North 1/2 of Lot 3 and all of Lot 4 and Lot 7, Sandra Subdivision. The property is located at 23, 63 and 65 Charlene Street. The property is owned by the City of Billings. The Zoning Commission recommends approval of Zone Change #799 and adopting the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Director Wyeth Friday explained the property is adjacent to the City Water Plant property and the City was planning to use the property for future expansion of the water treatment facility. He stated the City currently uses a storage shed on the North 1/2 of Lot 3 and has a water line running under a portion of the property. Mr. Friday noted that City Water Plant Superintendent Mike Rubich stated that the City was planning to purchase property along the east side of Charlene as the landowners decide to sell to add more property to the water plant facility.

He said the City's goal in this zone change application is to bring the property into the proper zoning jurisdiction with its current and future use as part of the Water Plant facility. He further explained that since the City already owned the property, it could continue to use the property contrary to the local zoning regulations as authorized under MCA 76-2-402. However, the City was interested in having the property within the City Limits and zoned correctly for public uses.

The lots directly to the north, south and west of these properties are zoned R-150. The lots east of the subject property are zoned Public and are part of the City of Billings' Water Plant facility. About half a block to the north, the PPL Montana coal-fired power plant is located on property zoned Heavy Industrial. Half a block to the south across Belknap Avenue is a cluster of properties zoned Community Commercial with several small businesses on the site. The South 27<sup>th</sup> Street/Interstate 90 interchange is located southwest of the subject properties. While the area had residentially zoned property and residential uses, it was an area that was surrounded by very intense commercial and industrial activities. The R-150 zoning along both sides of Charlene Street where these properties are located stretches for about one block and is surrounded on three sides by industrial uses and the Interstate 90 corridor. While there was no expectation that the residential zoning and uses would be eliminated in any specific time period, the area was expected to see a reduction in residential uses over time given its location, and the uses and zoning surrounding it.

The public hearing was opened. JOYCE BAKER, 83 CHARLENE stated her property borders Lot #7 and she wanted the Council to be aware of safety issues. Ms. Baker requested the Council have the fence that was torn down be "put back up".

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND 1<sup>ST</sup> READING ORDINANCE ZONE CHANGE**  
**#800: A zone change from Residential Manufactured Home (RMH) to**  
**Residential-6,000 (R-60) on Lots 15A, 16B & 16C, Block 1, Pemberton**  
**Subdivision and located at 525 N. Lakeview Drive, 532 & 542 Pemberton**  
**Lane. Zoning Commission recommends approval and adoption of the**  
**determinations of the 12 criteria. (Action: approval or disapproval of**  
**Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said the subject properties are located south of Pemberton Lane and west of the intersection of Main Street. The property owner plans to redevelop the property for several duplex condominium units in the future. The current zoning district does not allow two-family dwellings.

Ms. Cromwell stated the lots to the north are zoned Community Commercial (CC) and are not developed at this time. American Pharmaceutical is just north and east in the re-developed K-mart building. The property east and south of the site is Residential Mobile Home (RMH) and is developed for single-family dwellings. This area was a mixture of site built homes, modular

homes and manufactured homes. West of the site the zoning is Residential 6000 (R-60) and RMH, and duplex homes are under construction on North Lakeview Drive. A mobile home park is located on Lots 19 and 20. Property to the south is zoned RMH and is developed with modular single-family homes. Pemberton Lane and Lake Elmo Drive are both collector streets and currently handle about 1,700 vehicle trips per day. As property north of Pemberton Lane develops, this traffic volume will increase.

She said the Billings Heights Neighborhood Plan indicates this area should develop at a medium residential density. The proposed R-60 zoning district could allow a medium density residential development. Single-family homes and duplexes could be developed that would allow a density of 11 to 20 dwelling units on the total parcel. Ms. Cromwell noted that an irrigation ditch bisects the property and will limit the development of the parcels. In addition, easements for existing sanitary sewer and utilities further restrict development. It is likely the property could develop as many as four duplex units as shown on the concept site plan. The proposed R-60 would mirror zoning to the west of the property and allow a greater variety of housing choices in the neighborhood. Any development of the property would require adequate off-street parking and landscaping to buffer the adjacent residential uses.

Ms. Cromwell said the Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The new zoning will not increase urban sprawl by utilizing existing city services. Any redevelopment will have to comply with all applicable zoning requirements including screening and buffering from adjacent single family residential land uses. The new zoning gives reasonable consideration to the character of the district. The Zoning Commission conducted a public hearing on March 6, 2007, and recommended approval of the zone change on a 4-0 vote.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Stevens moved for approval of the Staff recommendation, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND SPECIAL REVIEW #838: A special review to construct a 10-plex apartment building on a property legally described as Certificate of Survey 534 in Flanagan Subdivision, Tract 1, Lot 8. The subject property is located at 1048 Foster Lane and is zoned Residential 6000 (R-60). Hanser Capital Holdings, LLC, owner. The Zoning Commission forwards no recommendation to the City Council as the result of a 2-2 tie vote. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Aura Lindstrand said the applicant is proposing ten (10) three-bedroom apartments within the structure as rental units. Pursuant to Section

27-308 of the Billings Montana City Code (BMCC), the Residential 6000 zoning district permits single-family residences and duplexes with the required square footage and permits residential structures containing 3-10 units with a special review. The minimum square footage required for a 10-plex is 19,000 square feet. Ms. Lindstrand said the subject property contains approximately 21,300 square feet. The applicant could construct three duplexes on the subject property without the special review.

Parking for the proposed site is being provided at both entrances to the property. BMCC Section 6-1203 specifies that 1.5 parking spaces are required for multi-family residential units containing one or more bedrooms. The applicant has provided the required 15 parking spaces, including one handicapped space and an additional five (5) spaces for overflow parking. Ms. Lindstrand said that while the parking requirement has been met, concerns were raised by the Building Department that the anticipated parking may exceed the available spaces due to the number of bedrooms in each unit. The Building Department also noted that an additional handicapped accessible space would be required on the side of the property bordered by 12<sup>th</sup> Street West, as all of the ground floor apartment units are required to be handicapped accessible.

Ms. Lindstrand said the Engineering Division also reviewed this application and found that the current property lines extend to the west into the 12<sup>th</sup> Street West right-of-way. As a result, the Engineering Division is requiring a road dedication of 30 feet along the subject property frontage on 12<sup>th</sup> Street West (Condition #6). She noted this would eliminate approximately four parking spaces within the development. In addition to the eliminated parking spaces, the applicant would lose approximately 2,250 square feet of lot area. The lot would then contain 19,050 square feet and still satisfy the requirement for a 10-plex.

In regard to landscaping, the applicant will be required to provide approximately 1,461 square feet of landscaping per Section 27-1105(a) BMCC. The applicant is proposing 5,065 square feet along the north and south property lines. Per BMCC, fifty percent (50%) of the required landscaping shall be located along the street frontages in order to provide for a positive street presence, as well as break up the bulk and scale of the proposed structure. Furthermore, a site-obscuring fence or hedge is required as a buffer between the proposed structure and the adjacent residential uses to the north and the south.

Ms. Lindstrand said the Planning Department has reviewed this application and is recommending denial. The surrounding properties are primarily single-family residences with the only exception being the commercial structures located along Central Avenue to the north, a multi-family structure located approximately one block to the south, and the manufactured home park

at the terminus of Foster Lane. She said Staff finds that the bulk and scale of the proposed building at approximately 6,670 square feet and 30-feet in height would be contrary to the neighboring owner-occupied, single-story residences. While the applicant has provided the parking required by the regulations, the anticipated parking need for 30 bedrooms exceeds the number of parking spaces provided. In addition, the applicant would be required to provide another handicapped space, as well as right-of-way dedication, which would decrease the overall parking for the site. The landscaping provided does exceed the required amount; however, there is no functional outdoor space for the residents of the apartment complex. The landscaping is provided only as a buffer area on the north and south portions of the property. Ms. Lindstrand said the applicant could construct three duplexes on the property without a special review. Duplexes would break up the bulk and scale of the proposed building by creating units that appear to be more single-family in nature with less parking, a lowered height, and more useable outdoor space for the residents.

While staff is recommending denial of this application, the Conditions of Approval have been provided and are recommended if the City Council finds for approval. The conditions are: The special review approval shall be limited to Certificate of Survey 534 in Flanagan Subdivision, Tract 1, Lot 8, and subject property located at 1048 Foster Lane.

1. Development of the site shall be in substantial conformance with the submitted site plan. Deviations from the approved site plan that change the location of buildings, parking lot access or parking areas will require additional special review approval.
2. An additional handicapped parking space is required for the parking lot accessed from 12<sup>th</sup> Street West. Additionally, all ground floor units shall be handicapped accessible.
3. A site obscuring fence at least 6-feet in height shall be installed between the proposed parking spaces along the southern property line and the proposed structure. Said fence shall be constructed of wood, stone, vinyl, brick or block; wire or chain link fencing is not permitted. A continuous hedge may be substituted for the required fence, provided that the proposed hedge bushes are at least 3-feet tall when planted and reach a mature height of 6-feet. *(Required by Section 27-1105.A.2 of the BMCC)*
4. The applicant shall provide a minimum of 365 square feet of landscaping along 12<sup>th</sup> Street West and Foster Lane. *(Required by Section 27-1105.A.1, BMCC)*
5. The applicant shall dedicate 30-feet of right-of-way along 12<sup>th</sup> Street West. *(Recommended by the Engineering Division)*

The public hearing was opened. SHAWN BENCH, 346 FOSTER LANE stated he wanted the Council to be aware that the public water drainage system caused problems.

DOUG DAVIS, 148 FOSTER LANE asked the Council where the accumulated trash would be collected.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for withdrawal of the special review, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND SPECIAL REVIEW #839: A special review to permit the storage of vehicles used for parts in a Highway Commercial (HC) zone, on a property legally described as Lot 3A, Hollar Sub., 2<sup>nd</sup> filing, owners: Edward and Linda Randash. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Aura Lindstrand said the subject property is located mid-block on Liberty Street directly west of Main Street in the Heights. The property is currently being utilized as a storage area for "parts" cars and contains a steel 8-foot high site obscuring fence around the perimeter of the property. She noted the automobiles stored in the enclosed area are inoperable and are used for parts on cars sold at the applicant's dealership until they are no longer useable. They are then sold to salvage yards.

Ms. Lindstrand stated the Zoning Commission has reviewed the Special Review and is recommending conditional approval. She explained in discussions with the state compliance office for wrecking licensure, Planning Staff found that the applicant had not obtained a state Motor Vehicle Wrecking Facility License and Condition #5 requires a state license be obtained. This license is required for dealers or wrecking yard owners who pull parts from inoperable vehicles. Ms. Lindstrand further noted that under the purview of the state license, a lot owner could sell used vehicle parts from the lot and crush vehicles onsite. However, the City has the ability to place restrictions on the use of the state license. In this case, the restrictions would include that there shall be no sale of individual parts from the vehicles and vehicle parts shall only be used to recondition vehicles sold at the Randash dealership. These conditions are necessary due to the location of the property in close proximity to a residential use located to the south. In addition to the state licensing requirements, there shall be no outdoor lighting permitted onsite, no delivery of vehicles before 7:00 am or after 7:00 pm, and the automobiles shall not be stacked in such a way that they are visible above the fence line (required by Conditions 2, 3, and 4) Councilmember Ulledalen asked if the DEQ would

monitor or control the disposal of "liquids" that would be drained from the vehicles.

The public hearing was opened. BONNIE ANDERSON, 1093 LINCOLN LANE said she wanted to let the Council be aware that she strongly objects to this special review.. She explained that she had concerns regarding the stormwater runoff for the site.

ED RANDASH, 601 MAIN STREET, said he is the owner and explained that the vehicles are removed from the site and taken to the repair shop across the street for any parts that involve motor oil, antifreeze, freon, or other fluids and are removed and disposed of according to the auto repair shop licensure requirements for storage and disposal.

DAVE BOVEE, 424 LEWIS AVENUE, stated he agreed with the recycling that would be done by the auto repair shop.

DON HOUSE, 624 JOYCE, stated he disagreed with the temporary storage of the vehicles by the auto repair shop.

DORIS, NO LAST NAME GIVEN, 609 JOYCE, stated she was against the auto repair shop. She noted that the shop was an "eyesore" and caused drainage problems. She asked the Council to consider the residents.

There were no other speakers. The public hearing was closed. Councilmember Ronquillo moved for conditional approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Veis amended the motion to limit the number of vehicles to three (3) and no parts, seconded by Councilmember Stevens. On a roll call vote on the amendment, the motion was approved 9-2. Councilmembers Ronquillo, Gaghen, Stevens, Veis, Ruegamer, Ulledalen, Boyer, Jones and Clark voted "yes". Mayor Tussing and Councilmember Brewster voted "no". On a voice vote on the motion as amended, the motion was approved.

**10. PUBLIC HEARING AND SPECIAL REVIEW #840: A special review to replace an existing beer and wine license with gaming with an all-beverage license for an existing restaurant/bar -- the Gigglin' Grizzly, at 416 Lake Elmo Road, on Tract 1, C/S 2225 in a Highway Commercial zoning district, owner: Charles Schmidt, , agent, Doug Jensen. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner David Green stated the property is zoned Highway Commercial and an on-premise consumption of alcoholic beverages can be allowed only by special review approval. He noted the property was currently developed as a casino bar and grill with a beer and wine license. There was currently an enclosed outdoor patio on the building. While researching the property, the Planning Division and Building Division were not able to find a building permit for the enclosing structure over the patio. Mr. Green reported the owner

proposed to re-model the interior of the building and remove all kitchen facilities to no longer serve meals. The owner also proposed to install ADA compliant restrooms and a full service bar. The property surrounding the site had developed with services such as the Main Street Casino Bar and Grill to the east, Heights Eye Care to the north, and Lake Elmo Coin-Op Laundry to the south. The property to the west is vacant.

Mr. Green noted there were two all beverage licenses within the immediate area that were approved at existing locations, MacKenzie River Pizza Company and Main Street Casino Bar and Grill. There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location. The public hearing was opened. Doug Jensen, owner, said he would answer any questions. There were no questions. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

Mayor Tussing called a brief recess at 9:40 p.m.

The meeting was called back to order at 9:50 p.m.

**11. PUBLIC HEARING AND SPECIAL REVIEW #841: A special review for an all beverage liquor license for a new casino, Palisades Casino, at 1911 King Avenue West, Suite B, on Lots 11A & 12 A, Block 1, CBH Industrial Park Subdivision in a Controlled Industrial (CI) zoning district. Owner: KRP, LLC, Jim Kisling, owner; John Herberg, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell stated Zoning Coordinator Nicole Cromwell explained that the State regulations allow multiple casinos in the same structure as long as they are separated by 150 feet and are under separate ownership. She noted that most of the property surrounding the site had been developed for services such as the Holiday gas station to the west, the Springhill Suites Hotel, the Texas Roadhouse restaurant, the Hu Hot Mongolian Grill, as well as several car dealerships and other service-oriented commercial establishments. The Palisades Casino at this proposed location will be located in Suite B, a 1,980-square foot space within a new multi-tenant building. She noted no outdoor patio lounge was planned.

Ms. Cromwell explained the City Council had proposed to develop a "casino overlay" zoning district that would provide further regulation of casinos and gaming establishments. She noted there are four liquor licenses within the immediate area that were approved at existing or proposed restaurant locations – the Texas Roadhouse, the Hu Hot Mongolian Grill, a new restaurant and casino east of this location and the Silver City Casino in Suite F of this proposed new

building. There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.

Ms. Cromwell said the Planning Department reviewed the application and recommended conditional approval. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. The application conforms to the first criteria insofar that it was within a Controlled Industrial zoning district where on-premise consumption of alcoholic beverages and gaming may be allowed by special review approval. The form of the application was correct and the proposed development of the property for the casino in the multi-tenant building appears to conform to site development standards. More detailed landscaping and parking plans are normally reviewed at the time of building permit submittal.

Ms. Cromwell further explained the application did conform to the second and third criteria. The zoning regulations adopted by the City Council had designated several zoning districts where on-premise consumption of alcoholic beverages and gaming may be allowed. The proposed Palisades Casino at 1911 King Avenue West, Suite B, will be the second casino proposed within the immediate area. The other casino location was in the opposite end of the building in Suite F. The other liquor licenses in the area are primarily restaurants that also have alcoholic beverages and a small area for gaming. There are no proposed residential developments in the immediate area and the Controlled Industrial zone is intended “*to accommodate a variety of business, warehouse and light industrial uses related to wholesale plus other business and light industries not compatible with other commercial zones, but which need not be restricted in industrial or general commercial zones, and to provide locations directly accessible to arterial and other transportation systems where they can conveniently serve the business and industrial centers of the city and county.*” Ms. Cromwell said the development of a casino in this location will fit in with the intention to provide a service to the other businesses and travelers to this area of West Billings. The proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging new developments that are sensitive to and compatible with the character of the adjacent land use patterns. The Controlled Industrial district and the Highway Commercial district south of this area are intended for concentration of commercial and service-oriented businesses. The site plan submitted shows the intent to develop a well-landscaped and designed commercial use.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the Zoning

Commission recommendation, seconded by Councilmember Clark. On a roll call vote, the motion was approved 9-2. Mayor Tussing and Councilmembers Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, and Jones voted "yes". Councilmembers Clark and Boyer voted "no".

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Clark. On a roll call vote, the motion was approved 9-2. Mayor Tussing and Councilmembers Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, and Jones voted "yes". Councilmembers Clark and Boyer voted "no".

**12. RESOLUTION creating Mayor/City Council Pay Review Committee. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. Councilmember Boyer moved to not appoint a committee, seconded by Councilmember Stevens. On a roll call vote, the motion was approved 8-3. Councilmembers Gaghen, Stevens, Brewster, Veis, Ruegamer, Boyer, Ulledalen, and Clark voted "yes". Mayor Tussing and Councilmembers Ronquillo, and Jones voted "no". The committee was not created.

**13. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)** There were no speakers.

**Council Initiatives**

JONES: MOVED to direct Staff to move ahead to find options and cost to meet the neighborhood concerns about the City land purchases on Charlene Street.  
APPROVED

**ADJOURN** -- The meeting was adjourned at 10:05 p.m.

THE CITY OF BILLINGS:

MINUTES 3/26/07

By: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

BY: \_\_\_\_\_  
Cam Trudeau, Deputy City Clerk